NO. 85-236

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 1985 TERM

HARRY W. EICHENLAUB,

Petitioner

v.

DAVID ALAN YURKY,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS ZIMMERMAN AND WICKER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

BEST AVAILABLE COPY

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QUESTION PRESENTED

Whether it was error for the Court of Appeals to hold that the county prison official who actually implemented a pre-trial detainee's transfer to a state prison was responsible for ensuring that any required transfer-related due process was provided.

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OPINIONS BELOW

The opinions of the Court of Appeals and of the District Court are unreported. Copies of those opinions may be found in the appendix to the petition for certiorari, respectively, at pages 1a-20a, and 1b-19b.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on May 10, 1985. The petition for writ of certiorari was filed within 90 days of that date, and jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The Civil Rights Act of 1871, as amended, provides in perintent part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983 (1976 & Supp. IV 1980).

STATEMENT OF THE CASE

Petitioner, the warden of a Pennsylvania county jail, transferred respondent David Alan Yurky, a pre-trial detainee in his custody,[1] for security reasons, to the Pennsylvania Department of Corrections' State Correctional Institution at Huntingdon, Pennsylvania, at which facility respondents Charles H. Zimmerman and Emanuel C. Wicker were em-

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[1]At all times relevant to this matter, respondent Yurky was incarcerated as a pre-trial detainee. Since the time of the events which gave rise to this suit, he was convicted of crimes for which he then was charged and is presently a prisoner in state custody. Because there are multiple respondents here, see n. 2, infra, to avoid confusion Yurky will be referred to throughout this brief as "the prisoner."

ployed as prison administrators.[2] The latter respondents, the state prison officials, had no involvement in that transfer, which was effected on an emergency basis.

The applicable operating procedures of the Pennsylvania state prisons provided that it was the obligation of county prison officials transferring pre-trial detainees in their custody to state prisons to comply with procedural protections which might be required under

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[2]Although the caption of the instant petition does not include respondents Zimmerman and Wicker, they are, in fact, parties to this action, having been co-defendants with the petitioner below. These respondents will be referred to collectively as "the state prison officials" throughout this brief.

the circumstances.[3] In cases of emergency transfers the regulations permitted the necessary process to occur following the transfer. At no time prior to the prisoner's transfer in this case was he provided with the due process required by the Cobb case nor was he afforded that process thereafter.

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[3]In Cobb v. Aytch, 643 F.2d 946 (3d Cir. 1981), a decision which predated the events on which this suit was based by several months, the Third Circuit Court of Appeals held that a pre-trial detainee had a liberty interest grounded in the federal constitution, specifically, the Sixth Amendment's rights to counsel and speedy trial, in remaining in a county penal facility. Accordingly, it held that, prior to transfer to a state correctional institution, a pre-trial detainee must be afforded notice and an informal, non-evidentiary hearing before a tribu-

FOOTNOTED CONTINUED ON NEXT PAGE

The prisoner brought an action pursuant to 42 U.S.C. § 1983 against the petitioner and the state prison officials claiming, inter alia, that he was denied due process in connection with his transfer from the county jail to a state prison.[4] The District Court, upon cross-motions for summary judgment, ruled that the prisoner was not denied

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FOOTNOTE CONTINUED FROM PREVIOUS PAGE

nal independent of the prison system. 643 F.2d at 961. In an emergency transfer situation, prompt post-transfer process was permissible. Pursuant to this ruling, regulations were issued which held county prison officials responsible for ensuring the aforementioned process was provided the prisoner to be transferred.

[4]The prisoner raised other claims in the District Court none of which are now the subject of the instant petition.

due process. The Court of Appeals affirmed the District Court's action with respect to the state prison officials, but as to petitioner, it vacated the grant of summary judgment. In doing so, the Court of Appeals held that the prisoner was not provided the transfer-related due process to which he was entitled, Pet. App. at 10a, but it also concluded that the obligation to ensure that such process was provided rested with the transferring county prison officials, namely, the petitioner, and not with the state prison officials who are respondents here. Id. at 10a-13a.

This Petition for Writ of Certiorari followed.

ARGUMENT

THE COURT OF APPEALS DID NOT ERR IN CONCLUDING THAT IT WAS THE RESPONSIBILITY OF COUNTY--NOT STATE--PRISON OFFICIALS TO ENSURE THAT THE REQUIRED TRANSFER-RELATED DUE PROCESS WAS AFFORDED THE PRISONER.

Petitioner also argues here that the Court of Appeals erred when it concluded that it was the obligation of the petitioner, the county official, who actually implemented the transfer of the prisoner--not state prison officials who merely received him into custody--to ensure that the requirements of due process are met. He argues that the Court should have ruled that the obligation was incumbent upon state officials especially in cases of

emergency transfers, as was the situation here, where expediency is required. There is no merit to this argument.[5]

The Court of Appeals properly reasoned that it was the petitioner's obligation to meet the requirements of due process because it was he, in fact, who was the party that sought to deprive the prisoner of his liberty interest in remaining in the county jail and the

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[5]Petitioner also argues that a pre-trial detainee who has not shown an actual deprivation of the effective assistance of counsel as a result of a transfer has been deprived of no protectible interest and, therefore, is entitled to no hearing procedures. We agree with this result, if not the precise rationale offered by petitioner. Because the issue we address above is dispositive of the state prison officials' liability, they do not address the other issue addressed by petitioner.

party who actually took the action adverse to the prisoner. Moreover, that conclusion was correct also because it was the petitioner alone who possessed the information which served as the basis for the transfer and therefore he was only the party capable of justifying the action taken.

Petitioner's reliance on Hewitt v. Helms, 459 U.S. 460 (1983) for the contrary position is without support. In Hewitt the prisoner at all times was in the custody of state prison officials. Those officials never suggested that they were not the appropriate parties to provide whatever procedures were required. Here, by contrast, there has been a change in custody and, as argued above, it is the local officials who have caused the alleged deprivation who must satisfy due process.

CONCLUSION

For the above-stated reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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